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5 UNITED STATES DISTRICT COURT
6 FOR THE WESTERN DISTRICT OF WASHINGTON,
7 AT SEATTLE

8 PROVIDENCE HEALTH AND SERVICES, a
9 Washington non-profit corporation; and
10 SWEDISH HEALTH SERVICES, a
11 Washington non-profit corporation,

12 Plaintiffs,

13 vs.

14 CERTAIN UNDERWRITERS AT LLOYD'S
15 LONDON, SYNDICATE 2623/623
16 (BEAZLEY); and FEDERAL INSURANCE
17 COMPANY,

18 Defendants.

Cause No. C18-495 RSM

**STIPULATED MOTION AND ORDER
TO MODIFY CASE SCHEDULE AND
CONTINUE TRIAL DATE**

19 **I. INTRODUCTION**

20 Pursuant to Local Civil Rule 16(b)(5)(ii), Plaintiffs Providence Health and Services and
21 Swedish Health Services (“Providence”) and Defendants Certain Underwriters at Lloyd’s
22 London, Syndicate 2623/623 (Beazley) and Federal Insurance Company (collectively
23 “Insurers”) respectfully submit this second Stipulated Motion to Modify the Case Schedule and
Continue the Trial Date. The case is currently set for trial on April 6, 2020, and has been

STIPULATED MOTION AND ORDER TO MODIFY CASE SCHEDULE
AND CONTINUE TRIAL DATE – 1
USDC WD WA/SEA CAUSE NO. 2:18-CV-00495RSM

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1 previously continued once. The parties seek a 70-day continuance to set a new trial date on or
2 after June 15, 2020.

3 **A. The Underlying Action**

4 This is an insurance coverage dispute arising from an underlying action brought against
5 Providence by Dr. David W. Newell, alleging age discrimination, retaliation, and breach of
6 contract. The matter proceeded to arbitration. The arbitrator issued an award against Providence
7 on August 18, 2017 in excess of \$17 million and subsequently awarded attorneys' fees that
8 raised the award above \$18 million.

9 The award was appealed to the Washington Court of Appeals, Division I. In June 2019,
10 the Court of Appeals affirmed the award. *Newell v. Providence Health & Servs.*, 2019 WL
11 2578679 (Wash. App. June 24, 2019) (unpublished). The Underlying Action has now
12 concluded, with a satisfaction of judgment entered in the trial court and a mandate issued by the
13 Court of Appeals.

14 **B. The Present Matter**

15 Providence purchased insurance policies from the Insurers. Providence contends there is
16 coverage for the underlying claims. The Insurers contend that there is no coverage for the
17 underlying claims.

18 Providence filed this action on March 1, 2018 in King County Superior Court. Dkt. No.
19 1-2. The Insurers removed the case to this Court on April 4, 2018. Dkt. No. 1. The parties
20 submitted a joint status report and discovery plan, in which they proposed different methods to
21 efficiently resolve this case. Dkt. No. 31. Per the parties' suggestions, and the Court's approval
22 of a stipulated schedule, the parties completed briefing of early cross-motions for summary
23 judgment on August 28, 2018. Dkt. No. 55.

1 While the cross-motions were pending, the parties participated in mediation, but they
2 were unable to resolve the dispute. Dkt. No. 56. Thereafter, in January 2019, the Court ruled
3 on the cross-motions, granted Providence's motion and denying defendants' motions. Dkt. No.
4 61.

5 The parties have engaged in written discovery and document production, which has
6 involved a substantial volume of documents, including ESI. The parties issued expert reports
7 under Fed. R. Civ. P. 26(a)(2) on October 9, 2019. The current deadline for rebuttal reports is
8 November 8, 2019. Dkt. No. 65.

9 Many of the RFPs addressed to Providence seek documents generated by Providence in
10 the course of defending itself in the underlying arbitration. In part due to the pending appeal,
11 Providence invoked the attorney-client privilege, work-product doctrine, or both, as to a large
12 portion of the responsive documents. Through the meet-and-confer process, the parties have
13 reached agreement as to the production of such documents, and Providence is in the process of
14 preparing them for production. This resolution was made possible in large part by the final
15 conclusion of the Underlying Action (discussed above), which did not come until August 2019.
16 The parties are agreed that they will require additional time to review the forthcoming
17 substantial production of additional documents. Further, the parties refrained from conducting
18 fact depositions until the privilege issues were resolved, and accordingly no depositions yet
19 have occurred. Finally, although the parties have exchanged opening expert reports, their
20 experts too will need to review and consider the use of the formerly withheld documents.¹

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23 ¹ Further, the parties have now agreed to a second mediation, which is scheduled for December
19, 2019 with a new mediator.

As a result of the foregoing events, the parties agree that, although they have diligently pursued discovery in this case, the remaining discovery cannot reasonably be completed before the existing discovery cutoff of December 9. The parties therefore join in seeking a modest continuance of the trial date and all interim deadlines, amounting to just over two months additional time.

C. Current Trial Date and Requested New Trial Date

A jury trial is currently set for April 6, 2020, and has been previously continued once. Dkt. Nos. 64, 65. The parties seek a new trial date on or after June 15, 2020. The parties jointly request a 70-day continuance of the following deadlines (as currently set by the Court's order at Dkt. No. 65):

| | |
|---|-------------------|
| Jury Trial Date | April 6, 2020 |
| Deadline for filing motions related to discovery. Any such motions shall be noted for consideration pursuant to LCR 7(d)(3) | November 8, 2019 |
| Discovery completed by | December 9, 2019 |
| All dispositive motions must be filed by and noted on the motion calendar no later than the fourth Friday thereafter | January 7, 2020 |
| Mediation per LCR 39.1(c)(3), if requested by the parties, held no later than | February 21, 2020 |
| All motions in limine must be filed by and noted on the motion calendar no later than the THIRD Friday thereafter | March 9, 2020 |
| Agreed pretrial order due | March 25, 2020 |
| Pretrial conference to be scheduled by the Court. | |

1 Trial briefs, proposed voir dire questions, April 1, 2020
2 jury instructions, neutral statement of
3 the case, and trial exhibits due

4 As Rule 26(a)(2) expert disclosures have occurred, but rebuttals have not, the parties request
5 the Court to set a deadline for rebuttal reports for December 9, 2019.

6 II. ANALYSIS AND ARGUMENT

7 Under LCR 16(b)(5)(ii), the Court may modify a case schedule for good cause shown.
8 The parties submit that good cause exists here. The parties have engaged in good-faith
9 attempts to resolve this matter efficiently, both by early dispositive motions practice and an
10 early mediation in October 2018. The parties also will be mediating again in December 2019.

11 The parties have also successfully addressed discovery issues through the meet-and-
12 confer process without resort to the Court. Until recently, Providence had asserted privilege to
13 certain documents and communications based in part on the view that discovery could pose a
14 risk of prejudicing its interests in the Underlying Action. Specifically, in light of the Court's
15 summary judgment ruling (Dkt. No. 61), a principal remaining issue is whether or to what
16 extent the Insurers have been prejudiced. Accordingly, subjects of the Insurers' discovery
17 included Providence's assessment and defense of the Underlying Lawsuit, which included, for
18 example, internal assessments and communications with counsel in the Underlying Action. As
19 noted, the conclusion of the Underlying Action has alleviated this concern, and Providence is
20 preparing a supplemental production.

21 The parties and counsel have conferred regarding their trial calendars, and as a result
22 request that the Court continue the trial date to the first available setting on or after June 15,
23

2020, and cause the Clerk to issue a new case schedule with interim dates consistent with the new trial date.

III. CONCLUSION

The parties' good-faith attempts at an early resolution of this matter and Providence's concerns regarding potential prejudice to its defense of the underlying claims constitute good cause for a continuance of the trial in this case. Accordingly, the parties respectfully request that the Court set the case for trial at the first available setting on or after June 15, 2020, with a commensurate adjustment of other case deadlines as set forth above, and a deadline for rebuttal reports of December 9, 2019. A proposed order is included below.

DATED this 30th day of October, 2019.

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1 **ORDER**

2 IT IS HEREBY ORDERED that the Stipulated Motion to Modify Case Schedule and
3 Continue Trial Date is GRANTED. The new trial date will be June 15, 2020. The Court will
4 issue a new case schedule consistent with this new trial date.

5 DATED this 1st day of November 2019.

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7 RICARDO S. MARTINEZ
8 CHIEF UNITED STATES DISTRICT JUDGE
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